

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X  
5 VICTORIA MALONE,

6 Plaintiff,

7 -against-

8 TOWN OF CLARKSTOWN, WAYNE BALLARD, in his personal  
9 and official capacity as Clarkstown Highway  
10 Superintendent, FRANK DIZENZO, in his personal and  
11 official capacity as Clarkstown Highway  
12 Superintendent, ANDREW LAWRENCE, in his personal and  
13 official capacity, DAVID SALVO, in his personal and  
14 official capacity, ROBERT KLEIN, in his personal and  
15 official capacity, TUCKER CONNINGTON, in his  
16 personal and official capacity, and BRIAN LILLO, in  
17 his personal and official capacity,

18 Defendants.  
19 -----X

20  
21 DEPOSITION OF DOMINIC SANTULLI

22 White Plains, New York

23 Monday, October 26, 2020

24 Reported by: Leonora L. Walker

25 JOB NO. 185656

10:08 a.m.

Deposition of DOMINIC SANTULLI, held at the offices of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, 1133 Westchester Avenue, White Plains, New York 10601, before Leonora L. Walker, a Notary Public of the State of New York.

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ALSO PRESENT:

Leslie Kahn - Town Attorney Town of Clarkstown  
Charles Connington  
Brittany Cordero

-----I N D E X-----	
EXAMINATION OF DOMINIC SANTULLI	PAGE
BY MR. COHEN	6
BY MS. FANTINO	219

-----E X H I B I T S-----	
SANTULLI DEPOSITION	PAGE
Exhibit 1 - Complaint	17
Exhibit 2 - Memo to Frank and Tucker	65
Exhibit 3 - Memo	71
Exhibit 4A- Bates No. TOWN-1602	85
Exhibit 4B- Bates No. TOWN-1603	85
Exhibit 5 - Text Messages	108
Exhibit 6 - Journal	110
Exhibit 7 - Memo to Frank DiZenzo	160
Exhibit 8 - Video	186
Exhibit 9 - Video	188
Exhibit 10- Video	189
Exhibit 11- Video	191
Exhibit 12- Video	196
Exhibit 13- Video	199
Exhibit 14- Calendar	202
Exhibit 15- Additional Calendar page	204
Exhibit 16- Photograph of Calendar	205



Page 22

1 D. SANTULLI

2 A. Yes.

3 Q. Wayne Ballard?

4 A. Yes.

5 Q. Andrew Lawrence?

6 A. No.

7 Q. David Salvo?

8 A. No.

9 Q. Robert Klein?

10 A. No.

11 MR. FLANNERY: Objection.

12 BY MR. COHEN:

13 Q. Tucker Connington?

14 A. No.

15 Q. Brian Lillo?

16 MS. FANTINO: Objection.

17 MR. McDERMOTT: Michael McDermott. I

18 object on behalf of Robert Klein.

19 BY MR. COHEN:

20 Q. So when was Ms. Malone subjected to sexual

21 and gender-based harassment?

22 MR. FLANNERY: Objection.

23 BY MR. COHEN:

24 Q. Approximately? Was it once in her

25 experience that you saw? Was it more than once?

Page 24

1 D. SANTULLI

2 examples that she had to put up with.

3 Q. Okay. Let's move on and we'll dig into some

4 of these as we go along, okay?

5 A. Okay.

6 Q. Second sentence, would you agree from what

7 you saw and what you knew about the highway

8 department, that, quote, the department tolerated and

9 encouraged a toxic atmosphere in which male employees

10 constantly made disgusting and degrading sexual

11 comments in front of Ms. Malone and within earshot of

12 supervisory employees?

13 MR. FLANNERY: Objection.

14 THE WITNESS: I would disagree with

15 encouraged.

16 BY MR. COHEN:

17 Q. Okay. But take out encourage. They

18 tolerated?

19 MR. FLANNERY: Objection.

20 THE WITNESS: Yes.

21 BY MR. COHEN:

22 Q. Okay. Who tolerated?

23 A. Meaning?

24 Q. Individuals?

25 A. I would say that at some point everybody at

Page 23

1 D. SANTULLI

2 A. It was more than once.

3 Q. Okay. About how often do you think?

4 A. I would say -- are you looking for, like,

5 once every other week?

6 Q. You tell me.

7 A. Time frame like that?

8 Q. Was it once every other week?

9 A. I would say that's fair.

10 Q. So if she worked there over 15 years

11 currently, at least every other week she was

12 subjected to some form of sexual or gender-based

13 harassment?

14 A. Yes.

15 MR. FLANNERY: Objection.

16 BY MR. COHEN:

17 Q. In what ways? Give me some examples, if you

18 could.

19 A. One example was somebody left an

20 pornographic magazine on the seat of her plow truck

21 or the plow truck assigned to her.

22 Q. Okay.

23 A. That would be one way. Wayne Ballard did

24 ban her from using the only female restroom in our

25 building. You know, those are the some of the

Page 25

1 D. SANTULLI

2 the highway department tolerated it.

3 Q. Including Wayne Ballard?

4 A. Yes.

5 Q. Including Frank DiZenzo?

6 A. Yes.

7 Q. Including --

8 MR. GARVEY: Objection.

9 BY MR. COHEN:

10 Q. Okay. Andrew Lawrence?

11 A. Yes.

12 Q. David Salvo?

13 A. Yes.

14 MR. GARVEY: Objection.

15 BY MR. COHEN:

16 Q. Robert Klein?

17 A. Yes.

18 MR. McDERMOTT: Objection. McDermott.

19 What was the answer to that?

20 MR. COHEN: He answered yes.

21 BY MR. COHEN:

22 Q. Tucker Connington?

23 MR. FLANNERY: Objection.

24 THE WITNESS: Yes.

25 BY MR. COHEN:



Page 42

1 D. SANTULLI

2 time?

3 MR. FLANNERY: Objection.

4 THE WITNESS: Yes.

5 BY MR. COHEN:

6 Q. Did you ever see Ms. Malone in the presence

7 of people talking about sex while on the job?

8 A. Ms. Malone talking about sex?

9 Q. No. Other people talking in her presence?

10 A. Yes.

11 MR. FLANNERY: Objection.

12 THE WITNESS: It's hard to say. A lot

13 of it occurred in our time clock room, which

14 is behind a closed door from us in the

15 supervisor's office. You know, it's --

16 there's quite a few of guys that's standing

17 there. To narrow it down to specific guys

18 and specific incidences is very hard.

19 BY MR. COHEN:

20 Q. Was it commonplace though? Did it happen

21 a lot?

22 MR. FLANNERY: Objection.

23 THE WITNESS: I wouldn't say

24 commonplace.

25 BY MR. COHEN:

Page 44

1 D. SANTULLI

2 Warbach came into the office.

3 Q. Did any of the supervisors ever take any

4 action about these comments being made in her

5 presence?

6 A. We did.

7 Q. What?

8 A. We would go out and ask the guys to stop or

9 tell them to knock it off.

10 Q. And did they?

11 A. Yes.

12 Q. Who did you tell to knock it off?

13 A. You would open the door and you would tell

14 them, guys, that's enough. You know, there's a line

15 that you can't cross. Knock it off. And then they

16 would change the conversation.

17 Q. And what was that like?

18 A. I don't know. It would be, again, one of

19 things that she referred to of like eating out like a

20 gazelle; and the previous one, that would be one that

21 would warrant us coming out and saying enough is

22 enough.

23 Q. Okay. Was any disciplinary action taken

24 against anyone for making these comments?

25 MR. FLANNERY: Objection.

Page 43

1 D. SANTULLI

2 Q. Did it happen more than ten times?

3 MR. FLANNERY: Objection.

4 THE WITNESS: In the 15 years she's

5 worked there?

6 BY MR. COHEN:

7 Q. Yes.

8 A. Yes.

9 Q. Did it happen more than 50 times in the 15

10 years?

11 MR. FLANNERY: Objection.

12 THE WITNESS: It's hard to say. I

13 would say right around there.

14 BY MR. COHEN:

15 Q. Right around 50 times, okay. Thank you.

16 Were any of the supervisors, deputies aware

17 of the sexual comments or gestures that were being

18 made around Ms. Malone?

19 MR. FLANNERY: Objection.

20 THE WITNESS: Yes.

21 BY MR. COHEN:

22 Q. Who?

23 A. I would say myself, Tucker, Joe Profina,

24 Andy Lawrence. Those were the four deputies. She

25 was transferred before Jeff Davidson and Donald

Page 45

1 D. SANTULLI

2 THE WITNESS: Not that I'm aware of.

3 BY MR. COHEN:

4 Q. Do you have any recollection of a snowstorm

5 in 2009 after which Ms. Malone fell asleep at the

6 highway department?

7 MR. FLANNERY: Objection.

8 THE WITNESS: Not specifically.

9 BY MR. COHEN:

10 Q. Okay. Do you recall her falling asleep

11 after a snowstorm ever?

12 A. Yes.

13 Q. And do you have any idea when that was?

14 A. It's pretty commonplace after a snowstorm.

15 Q. It is, okay.

16 Do you recall any men making sexual comments

17 or gestures while staring at Ms. Malone's body while

18 she was asleep?

19 MR. FLANNERY: Objection.

20 THE WITNESS: I do.

21 BY MR. COHEN:

22 Q. Tell me, what do you remember?

23 A. I remember them lined up. Ms. Malone had

24 fallen sleep on the counter of our lunchroom. She

25 was facing the wall. Her posterior was facing out



Page 50

1 D. SANTULLI

2 MR. GARVEY: Objection.

3 THE WITNESS: No. Just those

4 incidence.

5 BY MR. COHEN:

6 Q. Okay. Please read paragraph 29 to yourself.

7 Let me just check to make sure it's the same.

8 Yes, it is the same.

9 A. Okay.

10 Q. Did you ever hear that Ms. Malone was not

11 allowed to use the women's bathroom?

12 A. Yes.

13 Q. When was that approximately?

14 A. When her father first declared that he was

15 running against Wayne for the position of

16 superintendent of highways.

17 Q. So what happened?

18 A. There is one female bathroom in the

19 building; it happens to be in the office where

20 Wayne's office -- on the side of the office in which

21 Wayne's office is on. And I'm not sure of the exact

22 reasoning why, but she was no longer allowed to use

23 it.

24 Q. Did you ever hear Wayne Ballard speak about

25 it?

Page 52

1 D. SANTULLI

2 Q. Was it more than two years?

3 A. I can't say for sure.

4 Q. So it could have been somewhere between one

5 year and two years?

6 A. Yes.

7 Q. Okay. Did you ever hear Andy Lawrence say

8 anything about it?

9 A. Not indirectly.

10 Q. Indirectly?

11 MR. FLANNERY: Objection.

12 THE WITNESS: No.

13 BY MR. COHEN:

14 Q. At some point, was Ms. Malone forced to use

15 an electrical closet as a changing room?

16 MR. FLANNERY: Objection.

17 THE WITNESS: Yes.

18 BY MR. COHEN:

19 Q. Why was that?

20 A. At the time on the operations side, there

21 was no facilities for her to change, female

22 facilities.

23 In the past, one of the secretaries who had

24 worked there would use that electrical closet as her

25 locker room.

Page 51

1 D. SANTULLI

2 A. Not directly.

3 Q. Directly, what did you hear?

4 MR. FLANNERY: Objection.

5 THE WITNESS: I heard that he was

6 nervous she might overhear his strategy for

7 the campaign --

8 BY MR. COHEN:

9 Q. Okay.

10 A. -- and he didn't want her over on that side

11 of the office.

12 Q. So Ms. Malone was forced to use a men's

13 bathroom?

14 MR. FLANNERY: Objection.

15 THE WITNESS: It was a bathroom, yes.

16 BY MR. COHEN:

17 Q. For approximately how long did she have to

18 use a men's bathroom?

19 MR. FLANNERY: Objection.

20 THE WITNESS: I'm not sure years-wise.

21 BY MR. COHEN:

22 Q. Was it more than a month?

23 A. Yes.

24 Q. Was it more than a year?

25 A. Yes.

Page 53

1 D. SANTULLI

2 Q. So -- and Ms. Malone -- other than the

3 secretaries, Ms. Malone was the only woman at the

4 highway department as a laborer?

5 A. That is correct.

6 MR. FLANNERY: Objection.

7 BY MR. COHEN:

8 Q. Whose decision was it to have Ms. Malone use

9 the electrical closet, if you know?

10 A. I don't know.

11 Q. Okay. Do you know, did the room properly

12 lock?

13 A. Lock.

14 Q. And why was that? Any idea?

15 A. The lock -- no.

16 Q. Did people know that the room didn't lock

17 properly?

18 A. I'm not sure.

19 Q. But you knew?

20 A. I did.

21 Q. How come you knew?

22 A. I knew because the mechanics would come up

23 and jimmy the lock to take the toilet paper and paper

24 towels out of it.

25 Q. And there was no COVID crisis on toilet





Page 58

1 D. SANTULLI

2 A. Yes.

3 Q. Okay. And did he say anything to you about

4 your testimony?

5 A. No.

6 Q. Okay. Were you and Mr. Connington deputies

7 at the same time?

8 A. We were.

9 Q. You were.

10 And did you work in close proximity to each

11 other?

12 A. We did.

13 Q. Did you ever see or hear Mr. Connington do

14 anything that might be perceived as harassing

15 Ms. Malone?

16 MR. FLANNERY: Objection.

17 THE WITNESS: I did not.

18 BY MR. COHEN:

19 Q. Okay. Did you ever see him do anything that

20 might be intimidating to Ms. Malone?

21 MR. FLANNERY: Objection.

22 THE WITNESS: I did not.

23 BY MR. COHEN:

24 Q. Did she ever complain about that to you

25 about Mr. Connington's behavior?

Page 60

1 D. SANTULLI

2 Ms. Malone?

3 MR. GARVEY: Objection.

4 THE WITNESS: I was.

5 BY MR. COHEN:

6 Q. How were you aware of it?

7 A. He did so in the office in front of myself

8 and a few other supervisors.

9 Q. I'm a little confused.

10 You never saw it?

11 A. It was wrapped.

12 Q. It was wrapped.

13 But how did you know it was Go Girl?

14 A. Victoria told me.

15 Q. And when did it happen?

16 A. Shortly after Frank DiZenzo took office.

17 Q. In what context did he give it to her?

18 MR. GARVEY: Objection.

19 THE WITNESS: He handed it to her and

20 said, now you don't have to come back in

21 here; you can pee on the road like everybody

22 else.

23 BY MR. COHEN:

24 Q. Was this at a party?

25 A. No.

Page 59

1 D. SANTULLI

2 MR. FLANNERY: Objection.

3 THE WITNESS: Other than the incident

4 underneath the canopy.

5 BY MR. COHEN:

6 Q. The answer is no?

7 A. No.

8 Q. Got you. Thank you. Thirty-four, if you

9 would read that one to yourself.

10 A. Okay.

11 MR. EPSTEIN: Just to we're clear, 34

12 is referring to Frank DiZenzo?

13 MR. COHEN: Yes.

14 BY MR. COHEN:

15 Q. First, Mr. Santulli, did you ever see

16 highway department employees urinate in front of

17 Ms. Malone?

18 A. I did not.

19 Q. Okay. Do you know what a Go Girl is?

20 A. I do.

21 Q. And have you ever seen one?

22 A. Not in person.

23 Q. And how do you know what it is?

24 A. I've seen it on the Internet.

25 Q. Were you aware that Mr. Santulli gave one to

Page 61

1 D. SANTULLI

2 Q. You're shaking --

3 MR. FLANNERY: Objection.

4 THE WITNESS: No. I apolo -- no.

5 MR. FLANNERY: Objection.

6 BY MR. COHEN:

7 Q. It was in the office?

8 A. Yes.

9 Q. To be clear -- did anyone at the highway

10 department talk about this incident?

11 MR. FLANNERY: Objection.

12 THE WITNESS: Not that I recall.

13 BY MR. COHEN:

14 Q. Did anybody else see it?

15 MR. FLANNERY: Objection.

16 THE WITNESS: Andy Lawrence and Joe

17 Profina were in the office.

18 BY MR. COHEN:

19 Q. Did you ever say to Mr. DiZenzo that giving

20 Ms. Malone a Go Girl would be inappropriate?

21 MR. GARVEY: Objection.

22 THE WITNESS: I did say that it might

23 not be a good idea. I did not use the word

24 "inappropriate."

25 BY MR. COHEN:

Page 62

1 D. SANTULLI

2 Q. Okay. Not a good idea.

3 Why wouldn't it be a good idea?

4 A. In my opinion, when you go from a colleague

5 to a supervisor, certain things that may be viewed as

6 a joke as a colleague are different when you become a

7 supervisor.

8 Q. So in the supervisor position, it was

9 workplace inappropriate; would you agree with that?

10 MR. FLANNERY: Objection.

11 THE WITNESS: I would.

12 BY MR. COHEN:

13 Q. You would, okay.

14 What if a colleague gave it to her?

15 MR. GARVEY: Objection.

16 MR. FLANNERY: Objection.

17 BY MR. COHEN:

18 Q. Would that be inappropriate as well?

19 A. Yes.

20 Q. Okay. When you suggested to Mr. DiZenzo

21 that it might not be a good idea to give her a Go

22 Girl, what did he say to you?

23 A. I don't recall his exact response.

24 Q. But he went ahead and gave it to her anyway?

25 A. He did.

Page 64

1 D. SANTULLI

2 yourself.

3 A. Okay.

4 Q. Did you ever hear Mr. Connington say

5 anything about Ms. Malone's complaints?

6 MR. FLANNERY: Objection.

7 THE WITNESS: No, I did not.

8 BY MR. COHEN:

9 Q. About her filing any union grievances, did

10 you ever hear him say anything about that?

11 A. Other than they were filed, no.

12 Q. But did he comment to you that they were

13 filed?

14 MR. FLANNERY: Objection.

15 THE WITNESS: Yes.

16 BY MR. COHEN:

17 Q. Did he tell you what they were about?

18 A. No.

19 Q. You mentioned before that maybe you

20 didn't -- maybe you didn't. Withdrawn.

21 Did Mr. Connington ever change Ms. Malone's

22 work assignments?

23 MR. FLANNERY: Objection.

24 THE WITNESS: Mr. Connington changes

25 everybody's work assignments based on

Page 63

1 D. SANTULLI

2 Q. And do you remember Ms. Malone's reaction?

3 A. She kind of laughed it off.

4 MR. GARVEY: Objection.

5 BY MR. COHEN:

6 Q. Paragraph 39, if you would.

7 A. Okay.

8 Q. Okay. Do you recall an incident involving

9 Ms. Malone and Mr. Salvo involving gloves?

10 A. I do not.

11 Q. Let's move on.

12 What about a flagging incident?

13 A. I do not.

14 Q. Let's move on.

15 Did you ever hear Mr. DiZenzo express

16 displeasure with Ms. Malone for filing a union

17 grievance?

18 MR. FLANNERY: Objection.

19 MR. GARVEY: Objection.

20 THE WITNESS: No, I did not.

21 BY MR. COHEN:

22 Q. Were you aware that she filed a union

23 grievance?

24 A. No.

25 Q. Paragraph 40, if you would read that to

Page 65

1 D. SANTULLI

2 personnel and the tasks that need to be

3 accomplished.

4 BY MR. COHEN:

5 Q. Got you. What about opportunities for

6 overtime pay?

7 A. Not that I can recall off the top of my

8 head.

9 Q. Okay. Did you ever see him take any

10 retaliatory action against Ms. Malone at all?

11 MR. FLANNERY: Objection.

12 THE WITNESS: No.

13 BY MR. COHEN:

14 Q. Okay. Put this one aside. We're going to

15 go to a different exhibit. Do you want to take a

16 break for two minutes?

17 A. I'm all right.

18 Q. Okay. Let's keep going.

19 We're going to go to Plaintiff's Exhibit 2,

20 which is Bates stamped Malone 000174. Okay. And I'm

21 going to give one to counsel.

22 (Whereupon Exhibit 2 was marked for

23 identification.)

24 BY MR. COHEN:

25 Q. Tell me when you're ready.

Page 66

1 D. SANTULLI

2 A. I am ready.

3 Q. All right. Do you recognize it?

4 A. I do.

5 Q. And what is it?

6 A. This is a memo I wrote to Frank and Tucker

7 about a complaint Victoria made to me about an

8 incident with Brian Lillo.

9 Q. How did you become aware of the incident?

10 A. Victoria told me about it.

11 Q. Okay. You took Ms. Malone's complaint

12 seriously?

13 A. I did.

14 Q. Why is that?

15 A. She handed it to me in writing.

16 Q. And is that unusual?

17 A. Yes.

18 Q. Why is that?

19 A. Generally people don't put complaints in

20 writing unless they feel very strongly about it.

21 Q. And why is that?

22 MR. FLANNERY: Okay.

23 THE WITNESS: I'm not sure.

24 BY MR. COHEN:

25 Q. Okay. And you said in your memo, if I'm

Page 68

1 D. SANTULLI

2 A. I'm not sure.

3 MR. FLANNERY: Objection.

4 THE WITNESS: I can't speak directly.

5 Once the memo was given to Tucker and Frank,

6 I was not involved in the investigation.

7 BY MR. COHEN:

8 Q. So you don't know if either Tucker or Frank

9 interviewed Brian Lillo?

10 MR. FLANNERY: Objection.

11 THE WITNESS: I do not.

12 BY MR. COHEN:

13 Q. Should they have interviewed Brian Lillo?

14 MR. FLANNERY: Objection.

15 THE WITNESS: Again, it's not for me to

16 say. I wasn't handling it.

17 BY MR. COHEN:

18 Q. Would you have interviewed Brian Lillo --

19 MR. FLANNERY: Objection.

20 MR. GARVEY: Objection.

21 BY MR. COHEN:

22 Q. -- if you were in charge?

23 MR. FLANNERY: Objection.

24 THE WITNESS: I would have.

25 BY MR. COHEN:

Page 67

1 D. SANTULLI

2 reading correctly, quote, I am notifying my superiors

3 so that you can take the proper measures to ensure

4 this threatening behavior is corrected, correct?

5 A. That is correct.

6 Q. Okay. Do you know if this behavior was

7 discussed in the highway department?

8 MR. FLANNERY: Objection.

9 THE WITNESS: Yes.

10 BY MR. COHEN:

11 Q. By whom?

12 A. Frank DiZenzo and Tucker Connington.

13 Q. What was said?

14 A. They investigated the complaint. Frank

15 DiZenzo several weeks later came to me and said that

16 the specific incident with the chainsaw was reviewed.

17 The security footage was reviewed. The police

18 investigated it, and that they did not feel that

19 Brian was threatening Tori at that point, and that

20 they are to stay away from each other.

21 Q. And was that the extent of the highway

22 department's investigation --

23 MR. FLANNERY: Objection.

24 BY MR. COHEN:

25 Q. -- looking at the videotape?

Page 69

1 D. SANTULLI

2 Q. You would have.

3 Would you have interviewed Tori?

4 MR. FLANNERY: Objection.

5 THE WITNESS: I would have.

6 BY MR. COHEN:

7 Q. Are you aware if either Mr. DiZenzo or Mr.

8 Connington interviewed Tori?

9 A. I am not.

10 Q. Was any action taken against Brian Lillo?

11 A. Not that I know of.

12 Q. Should someone have talked to him about the

13 incident?

14 MR. FLANNERY: Objection.

15 THE WITNESS: I don't know.

16 BY MR. COHEN:

17 Q. If you were in charge, would some action

18 have been taken against Mr. Lillo?

19 MR. FLANNERY: Objection.

20 MR. GARVEY: Objection.

21 MS. FANTINO: Objection.

22 MR. EPSTEIN: In what sense?

23 BY MR. COHEN:

24 Q. Would you have said don't kick chairs around

25 her?

Page 70

1 D. SANTULLI

2 MR. FLANNERY: Objection.

3 THE WITNESS: Yes.

4 BY MR. COHEN:

5 Q. Would you say don't bring a chainsaw too

6 close to someone when you take it out of the back of

7 the truck?

8 MS. FANTINO: Objection. Fantino

9 objecting.

10 THE WITNESS: Again, I didn't see the

11 tape; I don't know how close the chainsaw

12 was to Ms. Malone. Hard for me to say.

13 BY MR. COHEN:

14 Q. If it came within a foot of her, would you

15 have said something to --

16 MS. FANTINO: Objection. Fantino

17 objection.

18 BY MR. COHEN:

19 Q. Hypothetically, if it had come within a foot

20 of her, would you have said something to Brian Lillo?

21 MR. FLANNERY: Objection.

22 THE WITNESS: Yes.

23 BY MR. COHEN:

24 Q. Two feet?

25 MR. FLANNERY: Objection.

Page 72

1 D. SANTULLI

2 Q. But she told you about it when?

3 A. Pretty close to after it happening; within a

4 day or so, I would say.

5 Q. Is it pretty unusual for someone to complain

6 about a deputy's behavior?

7 MR. McDERMOTT: Objection.

8 MR. FLANNERY: Objection.

9 THE WITNESS: In writing, yes.

10 BY MR. COHEN:

11 Q. So she did this one in writing as well?

12 A. Yes.

13 Q. And so you took it seriously?

14 A. I did.

15 Q. Did you investigate it at all?

16 A. I did not.

17 Q. Did anybody investigate it?

18 MR. FLANNERY: Objection.

19 THE WITNESS: I cannot speak to that.

20 Once the memo was handed to Frank DiZenzo,

21 it would be up to him to investigate it as

22 the superintendent of highways.

23 BY MR. COHEN:

24 Q. Did Mr. Connington ever say anything to you

25 about it?

Page 71

1 D. SANTULLI

2 THE WITNESS: No.

3 BY MR. COHEN:

4 Q. Okay. Let's move onto the next exhibit.

5 I'm going to show what is marked Plaintiff's

6 Exhibit 3, which is Bates stamped Malone 000214.

7 (Whereupon Exhibit 3 was marked for

8 identification.)

9 BY MR. COHEN:

10 Q. Tell me when you've read it.

11 A. Okay.

12 Q. All right. Do you recognize it?

13 A. I do.

14 Q. What did this involve?

15 A. It's a memo I wrote. Victoria came to me

16 about an incident involving roll-off 333 that

17 occurred between her and Mr. Connington.

18 Q. And what had happened?

19 A. Victoria came to me. What the memo said,

20 the truck wasn't stopped, didn't stop. She brought

21 it in and she was confronted underneath -- we have a

22 canopy at work -- by Mr. Connington, who she felt

23 verbally abused her at that point.

24 Q. Were you there?

25 A. I was not.

Page 73

1 D. SANTULLI

2 A. He did not.

3 Q. Did Mr. DiZenzo say anything to you about

4 it?

5 A. He did not.

6 Q. Did anybody else?

7 A. Other than Ms. Malone, no.

8 Q. Other than Ms. Malone?

9 A. No.

10 Q. So it wasn't the talk of the highway

11 department?

12 A. No.

13 Q. Is it unusual for a deputy to -- I'll use

14 the word berate, but if you want to --

15 A. Okay.

16 Q. -- change that word, you may.

17 -- berate an underling?

18 MR. FLANNERY: Objection.

19 THE WITNESS: I wouldn't say it's

20 unusual.

21 BY MR. COHEN:

22 Q. Is it unusual for someone to complain in

23 writing about it?

24 A. Yes.

25 Q. Why is that?



Page 86

1 D. SANTULLI  
2 49 in the amended complaint.  
3 MR. COHEN: Thank you. I appreciate  
4 it. And I apologize.  
5 BY MR. COHEN:  
6 Q. Take a look at those.  
7 A. Okay.  
8 Q. Were you a -- do you recognize these  
9 documents?  
10 A. I do not.  
11 Q. Okay. Were you aware of an incident  
12 involving Ms. Malone and a roll-off truck with a  
13 cable snapping?  
14 A. Aware in what sense? Did I hear about it?  
15 Q. Did you hear about it?  
16 A. Yes.  
17 Q. What did you hear?  
18 A. I heard that Tori was taking the roll-off  
19 box off the truck and the cable snapped.  
20 Q. And is that unusual for the cable to snap?  
21 MR. FLANNERY: Objection.  
22 THE WITNESS: No.  
23 BY MR. COHEN:  
24 Q. Is it serious?  
25 A. Yes.

Page 88

1 D. SANTULLI  
2 MR. EPSTEIN: If you know.  
3 BY MR. COHEN:  
4 Q. If you know.  
5 A. I do not know.  
6 Q. Okay. I'll represent to you that it is; it  
7 was provided by the town and refers to the same  
8 truck.  
9 A. Okay.  
10 Q. Is it unusual for a vendor to write a letter  
11 some six weeks later about a repair that they did?  
12 MR. FLANNERY: Objection.  
13 THE WITNESS: I've never seen it  
14 before.  
15 BY MR. COHEN:  
16 Q. And would it be unusual for them to make a  
17 conclusion, the broken end of the cable looked like  
18 normal wear and tear?  
19 MR. FLANNERY: Objection.  
20 THE WITNESS: I'm sorry. Can you  
21 repeat the question?  
22 BY MR. COHEN:  
23 Q. Sure. Would it be unusual for a vendor to  
24 say after they have replaced the part -- withdrawn.  
25 Let's move on.

Page 87

1 D. SANTULLI  
2 Q. Because someone can get hurt with this --  
3 A. Yes.  
4 Q. -- container rolling off --  
5 A. Yes. And the cable --  
6 Q. -- and the cable snapping itself?  
7 Is it unusual -- do you ever see invoices  
8 from vendors?  
9 A. When I was in charge of the shop, yes.  
10 After I was no longer in charge of the shop, no, I  
11 did not see vendor's invoices.  
12 Q. And 4A refers to the cable that snapped on  
13 the truck that she was driving, right?  
14 A. Yes.  
15 Q. And it's dated the 24th of January 2019,  
16 correct?  
17 A. Yes.  
18 Q. And it's pretty detailed what they're  
19 replacing, right?  
20 A. Correct.  
21 Q. And the second part of the -- part B of the  
22 exhibit is a letter from the same company; is that  
23 right?  
24 A. It appears to be.  
25 Q. And it refers to the same truck?

Page 89

1 D. SANTULLI  
2 Are you aware of an incident in which a  
3 wheel of a snowplow Ms. Malone was driving came off?  
4 A. Yes.  
5 Q. What's your recollection of that?  
6 A. Because I'm her direct supervisor, she  
7 notified me. She called me, said, my wheels fell  
8 off. I'm on Pecan Valley Drive.  
9 I said, okay. Are you okay?  
10 Yes.  
11 Okay. No problem. Hang tight. I'll call  
12 the mechanics and I'll meet you out there.  
13 Q. How often do wheels fall off of trucks?  
14 A. In my 23 years, I've seen it two other  
15 times.  
16 Q. Two other times in 23 years.  
17 So it's unusual, yes?  
18 MR. FLANNERY: Objection.  
19 THE WITNESS: Yes.  
20 BY MR. COHEN:  
21 Q. And potentially serious?  
22 MR. FLANNERY: Objection.  
23 THE WITNESS: Yes.  
24 BY MR. COHEN:  
25 Q. Okay. Were you disturbed by this incident

Page 90

1 D. SANTULLI

2 in any way?

3 MR. FLANNERY: Objection.

4 THE WITNESS: I was not.

5 BY MR. COHEN:

6 Q. Concerned?

7 A. Always concerned when tires fall off a

8 truck, not only the driver's safety, but anybody who

9 happens to be on the road where that tire is headed

10 towards.

11 Q. Were you aware that the two incidents

12 involving Ms. Malone, the cable snapping and the

13 wheel falling off, took place in less than a span of

14 a month?

15 MR. FLANNERY: Objection.

16 THE WITNESS: Yes.

17 BY MR. COHEN:

18 Q. You were aware?

19 A. Yes.

20 Q. Did that concern you in any way?

21 A. No.

22 Q. Did the highway department conduct an

23 investigation?

24 A. Yes.

25 Q. And what was the result of that

Page 92

1 D. SANTULLI

2 garage.

3 BY MR. COHEN:

4 Q. Did that surprise you?

5 MR. FLANNERY: Objection.

6 THE WITNESS: Yes.

7 BY MR. COHEN:

8 Q. Why?

9 A. In what I recall of reading that memo that

10 was sent to her, it surprised me the fact that she

11 was moved because the highway wasn't safe for her to

12 work at.

13 Q. Did you think the highway department was a

14 safe place for her to work?

15 MR. FLANNERY: Objection.

16 THE WITNESS: As in physical harm

17 coming toward her, I didn't see, feel that

18 was coming toward her.

19 Again, these two specific incidences, I

20 thought were just bad luck and coincidences.

21 BY MR. COHEN:

22 Q. What about non physical harm, was it a safe

23 place for her to be?

24 MR. FLANNERY: Objection.

25 THE WITNESS: Again, words don't cause

Page 91

1 D. SANTULLI

2 investigation?

3 A. I'm not sure.

4 Q. Did anything come of it?

5 A. Not that I know of.

6 Q. Okay. In fact, wasn't -- didn't Mr. DiZenno

7 move Ms. Malone out of the highway department?

8 MR. FLANNERY: Objection.

9 MR. McDERMOTT: Objection.

10 THE WITNESS: He did.

11 BY MR. COHEN:

12 Q. Did he discuss that with you?

13 A. He did not.

14 Q. Did you hear anything about that decision to

15 move Ms. Malone out?

16 MR. FLANNERY: Objection.

17 MR. McDERMOTT: Objection.

18 THE WITNESS: Just from her.

19 BY MR. COHEN:

20 Q. And what did you hear?

21 MR. McDERMOTT: Objection.

22 MR. FLANNERY: Objection.

23 THE WITNESS: She showed me the letter

24 that she was being transferred, and that she

25 was to report on that Monday to the town

Page 93

1 D. SANTULLI

2 physical hurt towards people, so safe in

3 what manner?

4 BY MR. COHEN:

5 Q. You tell me. I'm hearing words, but I'm not

6 sure I'm really understanding.

7 MR. FLANNERY: Objection.

8 THE WITNESS: Right. I'm not sure that

9 I'm understanding what you're asking me.

10 Are you asking me --

11 MR. EPSTEIN: Ask him to rephrase.

12 BY MR. COHEN:

13 Q. Was it a good place for Ms. Malone to be

14 working at that time?

15 MR. EPSTEIN: I'll object to the form.

16 MR. FLANNERY: Objection.

17 BY MR. COHEN:

18 Q. Was the highway department a good place for

19 Ms. Malone to be working at that time given what was

20 happening to her?

21 MR. McDERMOTT: Objection.

22 MR. FLANNERY: Objection.

23 MR. EPSTEIN: I'll object to the form

24 as well. It's very broad in terms of what

25 you're asking.





Page 146

1 D. SANTULLI

2 A. 2013.

3 Q. You said 2013?

4 MR. EPSTEIN: Yes.

5 By MR. COHEN:

6 Q. I'm sorry. We spoke over each other. I

7 apologize.

8 A. Yes.

9 Q. Two thousand --

10 MR. EPSTEIN: Thirteen.

11 BY MR. COHEN:

12 Q. -- thirteen?

13 And this is now what year?

14 MR. EPSTEIN: Appears to be 2017.

15 BY MR. COHEN:

16 Q. Would you agree that it's 2017

17 approximately, Mr. Santulli?

18 A. Yes.

19 Q. So problems with Tori's bathroom going on

20 over the course of four years?

21 A. Yes.

22 Q. Four years, okay.

23 MR. EPSTEIN: I'm just going to object

24 to the form of that because we don't know

25 what this problem is. We don't know if

Page 148

1 D. SANTULLI

2 A. Talk to Tori.

3 Q. And do you know if that happened?

4 A. I do not.

5 Q. Okay. Four nine -- last four lines on 4955,

6 please read those, read that aloud, last four lines.

7 A. Starting with, I had no idea, or I used to

8 handle this?

9 Q. I used to handle this.

10 A. I use handle this. One more thing, FDZ, FDZ

11 has cut me out of -- K. Kunz is going to jet vac to

12 pick up the tube today. Also, FDZ said there is no

13 way he can Salvo on the OC foreman's list. FDZ said

14 Salvo called looking for another favor. MEO III was

15 the first favor.

16 Q. Okay. What's going on? Let's start with

17 the first part of the sentence, I used to handle

18 this.

19 A. Okay.

20 Q. One more thing, FDZ has cut me out?

21 A. Yes.

22 Q. What's he cut you out of know?

23 MR. McDERMOTT: Objection.

24 MR. FLANNERY: Objection.

25 THE WITNESS: In the line before that?

Page 147

1 D. SANTULLI

2 that's the same problem or a different

3 problem.

4 BY MR. COHEN:

5 Q. Do you recall what the problem is?

6 A. No, I do not.

7 Q. Okay. And what happened here? Did someone

8 actually do something?

9 MR. FLANNERY: Objection.

10 BY MR. COHEN:

11 Q. Who's B. McDonald?

12 A. Beth McDonald is the president of the union.

13 Q. And she asked Frank DiZenzo to do something

14 about it?

15 MR. GARVEY: Objection.

16 BY MR. COHEN:

17 Q. Well, what does it say?

18 A. She reached out to him about guys using the

19 bathroom, slash, locker room.

20 Q. And what did Frank DiZenzo do?

21 MR. GARVEY: Objection.

22 THE WITNESS: I don't recall.

23 BY MR. COHEN:

24 Q. In the "her" in this sentence, talked to

25 her, is it to talk to Beth McDonald or talk to Tori?

Page 149

1 D. SANTULLI

2 BY MR. COHEN:

3 Q. Yeah.

4 A. It says, Frank tries, came to measure dump

5 bodies today.

6 Q. What does that mean?

7 A. We have dump trucks that we spec and order,

8 and that was something that I used to do -- or that I

9 did.

10 Q. These are container bodies, not human

11 bodies?

12 A. No. Dump truck bodies.

13 Q. Right. And that had been part of your

14 responsibility?

15 A. Yes.

16 Q. And Frank DiZenzo took it away from you?

17 A. Yes.

18 Q. Do you know why?

19 A. No.

20 Q. He never talked to you about it?

21 A. No.

22 Q. Okay. Then what's going on with Salvo?

23 A. It looks like Dave was jobbing for the

24 foreman's position.

25 Q. What about the favor, was the first favor?



Page 206

1 D. SANTULLI

2 workers putting colleagues on their shoulders?

3 A. Yes.

4 Q. In what context?

5 A. To do squats to show off that they can squat

6 certain amounts of weight.

7 Q. And is that what you think might be

8 happening here?

9 A. It's hard to tell from just a picture.

10 Q. Okay. And is it appropriate workplace

11 behavior?

12 A. No.

13 MR. FLANNERY: Objection.

14 BY MR. COHEN:

15 Q. Mr. Santulli, look, you've been very

16 generous of your time and your candor, let me ask

17 this: Would you describe the Clarkstown highway

18 department when Ms. Malone worked there as a hostile

19 work environment for women?

20 MR. FLANNERY: Objection.

21 MR. McDERMOTT: Objection. McDermott.

22 MR. GARVEY: Objection.

23 THE WITNESS: I don't know if I would

24 classify it as hostile. "Difficult" would

25 be the word that I would use to describe it.

Page 208

1 D. SANTULLI

2 MR. FLANNERY: Objection.

3 THE WITNESS: Yes.

4 BY MR. COHEN:

5 Q. Some unfair treatment?

6 MR. FLANNERY: Objection.

7 MR. McDERMOTT: Objection.

8 THE WITNESS: Yes.

9 BY MR. COHEN:

10 Q. Anything else you would describe it as?

11 A. No.

12 Q. You have sons, not daughters, right?

13 A. That is correct.

14 Q. Do you have any nieces?

15 A. I do.

16 Q. Would you want your nieces to work at the

17 highway department?

18 MR. EPSTEIN: Objection.

19 MR. FLANNERY: Objection.

20 THE WITNESS: It's a tough question to

21 answer.

22 BY MR. COHEN:

23 Q. Happily you're on the hot seat and not me.

24 A. Yes, in one hand it is a good job. The

25 benefits are well, it pays well.

Page 207

1 D. SANTULLI

2 BY MR. COHEN:

3 Q. In what way difficult?

4 A. Guys act a certain way around other guys;

5 and some of them treated Tori like she was one of the

6 guys. And she had to prove herself on a daily basis

7 that she could work at the same level as the men did

8 in that place --

9 Q. Was she --

10 A. -- in the highway department.

11 Q. Was she subjected to -- would you call it

12 hazing?

13 MR. FLANNERY: Objection.

14 BY MR. COHEN:

15 Q. What would you call it? You said

16 "difficult" and I want to explore that a little bit.

17 A. I think she was subjected to some hazing,

18 yes.

19 Q. Okay. Some crude behavior?

20 MR. FLANNERY: Objection.

21 MR. McDERMOTT: Objection. McDermott.

22 THE WITNESS: Yes.

23 BY MR. COHEN:

24 Q. Some lewd behavior?

25 MR. McDERMOTT: Objection.

Page 209

1 D. SANTULLI

2 On the other hand, to feel that they have to

3 come in and prove themselves equal to the other men

4 working there would be very tough.

5 Q. Do they have to endure offensive conduct?

6 MR. FLANNERY: Objection.

7 MR. EPSTEIN: Objection.

8 BY MR. COHEN:

9 Q. Would you be concerned about that?

10 A. Yes.

11 Q. Would you be concerned that they would have

12 to endure sexual comments?

13 MR. FLANNERY: Objection.

14 THE WITNESS: Yes.

15 BY MR. COHEN:

16 Q. Sometimes that behavior by some of the men

17 being serious?

18 MR. EPSTEIN: Objection as to form. I

19 don't know what you mean by that.

20 MR. COHEN: I'll withdraw. I'll

21 rephrase.

22 BY MR. COHEN:

23 Q. Would you be concerned that women in the

24 highway department would have to endure unpleasant,

25 severe, or unpleasant behavior by guys?

Page 210

1 D. SANTULLI

2 MR. FLANNERY: Objection.

3 MR. EPSTEIN: Objection as to form.

4 It's way too general.

5 BY MR. COHEN:

6 Q. If you understand.

7 A. I'm not sure I understand what you're

8 asking.

9 Q. Okay. You said you wouldn't want your --

10 you're not sure you would want your nieces because

11 they would have to show they were -- no, you didn't

12 say show. They prove they're one of the guys.

13 But put up with what?

14 A. I said that --

15 MR. FLANNERY: Objection.

16 THE WITNESS: -- they would have to

17 prove themselves equal to the men that

18 worked there.

19 BY MR. COHEN:

20 Q. Prove themselves equal in a performance way

21 or in another way?

22 A. In a performance way.

23 Q. And why would that be different for a woman

24 than for a man coming onto the job?

25 A. I don't think it's necessarily different for

Page 212

1 D. SANTULLI

2 abusive comments, didn't she?

3 MR. FLANNERY: Objection.

4 MR. EPSTEIN: Objection. He wasn't

5 present for those.

6 BY MR. COHEN:

7 Q. Were you ever present for any abusive

8 comments towards Tori?

9 MR. FLANNERY: Objection; it's been

10 asked and answered several times.

11 THE WITNESS: Directly at her?

12 BY MR. COHEN:

13 Q. In her presence?

14 A. Yes.

15 Q. And sexually suggestive comments or

16 behaviors in her presence?

17 MR. FLANNERY: Objection.

18 THE WITNESS: Yes.

19 BY MR. COHEN:

20 Q. Do you think she was discriminated against

21 in any way because of her sex?

22 MR. FLANNERY: Objection.

23 MR. EPSTEIN: Objection.

24 BY MR. COHEN:

25 Q. Your opinion, do you think Tori was

Page 211

1 D. SANTULLI

2 a woman and a man. The men prove themselves to each

3 other also.

4 There are some tasks that some employees,

5 some men can physically not perform. And, you know,

6 it's -- I feel that, you know, the women have to do

7 the same thing in -- that the men do.

8 Q. Is there a macho component to this?

9 MR. FLANNERY: Objection.

10 THE WITNESS: For some, there is.

11 BY MR. COHEN:

12 Q. Can it be intimidating?

13 A. In what sense? Would a woman be intimidated

14 working there? Is that what --

15 Q. Would they?

16 MR. FLANNERY: Objection.

17 THE WITNESS: No.

18 BY MR. COHEN:

19 Q. If they had to put up with abusive comments,

20 would it be intimidating?

21 MR. FLANNERY: Objection.

22 THE WITNESS: Hard to say. It depends

23 on the person.

24 BY MR. COHEN:

25 Q. And, in fact, Tori had to put up with

Page 213

1 D. SANTULLI

2 discriminated against in any way because of her sex?

3 MR. EPSTEIN: Objection. You're asking

4 him to a legal conclusion.

5 MR. COHEN: No. I'm asking for his

6 opinion.

7 MR. FLANNERY: On a legal conclusion.

8 MR. EPSTEIN: You're asking for a legal

9 conclusion. It's directly related to this

10 case.

11 BY MR. COHEN:

12 Q. The common -- I'm not asking for a legal

13 definition of discrimination. I'm asking as a person

14 with an education, who has worked in this environment

15 for more than 20 years --

16 A. Yes.

17 Q. -- do you think Tori was discriminated

18 against because she was a woman?

19 MR. EPSTEIN: Objection. You're asking

20 him for a direct conclusion as to this case.

21 You can't do that. He is not an expert in

22 the field --

23 MR. COHEN: No, he's not. I'm not

24 asking him to testify as an expert. I'm

25 asking for his personal opinion.

Page 214

1 D. SANTULLI

2 MR. EPSTEIN: Again, you're asking him

3 for a legal conclusion to this matter.

4 BY MR. COHEN:

5 Q. Do you want to offer a legal conclusion to

6 this matter?

7 A. I do not.

8 Q. Okay. Did Wayne Ballard allow that hostile

9 work environment to continue when he was

10 superintendent?

11 MR. FLANNERY: Objection.

12 THE WITNESS: Yes.

13 BY MR. COHEN:

14 Q. Did he encourage it in any way?

15 MR. FLANNERY: Objection.

16 THE WITNESS: No.

17 BY MR. COHEN:

18 Q. Did he contribute to it in any way?

19 MR. FLANNERY: Okay.

20 THE WITNESS: Yes.

21 BY MR. COHEN:

22 Q. And I think you testified how he did that.

23 Is there anything else you want to add to

24 that about Wayne Ballard's behavior?

25 MR. FLANNERY: Objection.

Page 216

1 D. SANTULLI

2 MR. FLANNERY: Objection.

3 THE WITNESS: In not encouraging Frank

4 or Wayne to step up and stop it.

5 BY MR. COHEN:

6 Q. Anything else?

7 A. That's it.

8 Q. Okay. Did he encourage it?

9 MR. FLANNERY: Objection.

10 THE WITNESS: No.

11 BY MR. COHEN:

12 Q. Did he contribute to it?

13 MR. FLANNERY: Objection.

14 THE WITNESS: Yes.

15 BY MR. COHEN:

16 Q. In what way?

17 A. I think the incident underneath the canopy

18 contributed to it. Besides that incident that was

19 brought to my attention, I cannot think of anything

20 else.

21 Q. Okay. You've known Tori for a long time

22 now, more than 15 years?

23 A. Since she started at the highway department

24 as seasonal work is when I first met her.

25 Q. So it's more than 15 years?

Page 215

1 D. SANTULLI

2 THE WITNESS: No.

3 BY MR. COHEN:

4 Q. What about Frank DiZenzo, did he allow a

5 hostile work environment to continue while he was

6 superintendent?

7 MR. FLANNERY: Objection.

8 THE WITNESS: Yes.

9 BY MR. COHEN:

10 Q. And did he encourage it in any way?

11 MR. FLANNERY: Objection.

12 THE WITNESS: No.

13 BY MR. COHEN:

14 Q. Did he contribute to it in any way other

15 than the Go Girl incident?

16 MR. FLANNERY: Objection.

17 THE WITNESS: No.

18 BY MR. COHEN:

19 Q. Okay. Did Tucker Connington allow the

20 hostile work environment to continue while he was

21 deputy?

22 MR. FLANNERY: Objection.

23 THE WITNESS: Yes.

24 BY MR. COHEN:

25 Q. In what way?

Page 217

1 D. SANTULLI

2 A. I'm not sure when she started; I can't give

3 you an exact year of when she started.

4 Q. And you described a hostile, difficult

5 environment that she's put up with for 15 years?

6 MR. FLANNERY: Objection.

7 THE WITNESS: Yes.

8 BY MR. COHEN:

9 Q. Did you see it have any effects on her?

10 MR. FLANNERY: Objection.

11 THE WITNESS: In what manner? Work

12 performance?

13 BY MR. COHEN:

14 Q. Did it have any impact on her work

15 performance?

16 A. No.

17 Q. Did it have any impact on her outward

18 appearance of happiness?

19 MR. FLANNERY: Objection.

20 THE WITNESS: Not that I could tell.

21 BY MR. COHEN:

22 Q. Of comfort?

23 MR. FLANNERY: Objection.

24 MR. EPSTEIN: What do you mean by

25 comfort?